

Q&As for Build America, Buy America (BABA) Implementation Plan to Enhance Buy America for Electric Vehicle (EV) Chargers

July 11, 2023

On February 21, 2023, FHWA issued the *BABA Implementation Plan to Enhance Buy America for EV Chargers* to enable EV charger acquisition and installation to immediately proceed while also ensuring the application of Buy America to EV chargers by the phasing of requirements over time. The Implementation Plan consists of a Limited [Waiver of Buy America Requirements for Electric Vehicle Chargers](#), which waives the application of FHWA's Buy America requirements for steel, iron, and manufactured products under 23 U.S.C. 313 and the construction materials requirement under § 70914 of the Build America, Buy America Act (BABA) (Pub. L. 117-58, div. G §§ 70901-52) (collectively referred to as "Buy America requirements") to EV chargers under certain conditions.

Prior to issuing the Implementation Plan, EV chargers were covered by FHWA's Buy America General Waiver for Manufactured Products. In addition, Buy America requirements applied to any predominantly steel or iron component of an EV charger regardless of the overall composition of the EV charger. FHWA developed the Implementation Plan to clarify Buy America requirements for EV chargers and encourage the domestic EV charger industry to ramp up production.

The Implementation Plan consists of three key components. First, it removes EV chargers from the Manufactured Products General Waiver. Second, it waives Buy America steel and iron requirements except for predominately steel or iron housing components. Third, it phases in Buy America coverage to give domestic EV manufacturers time to grow to meet demand for domestic EV chargers. Depending on when the EV charger is manufactured and installed, EV chargers covered by the Implementation Plan satisfy Buy America requirements if they conform with certain conditions laid out in the Implementation Plan. Accordingly, EV chargers that conform with the Implementation Plan may be used on FHWA projects without the need to obtain a project-specific waiver from FHWA.

Except for any statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind States or the public in any way. This document is intended only to provide clarity regarding existing requirements under the law or agency policies.

General Information

Q#1. Who does this Buy America Implementation Plan affect?

A#1. This Implementation Plan only affects entities that are recipients of FHWA funding. The Implementation Plan has no effect on EV chargers that are not purchased in connection with an FHWA-funded project, such as EV chargers purchased by individuals

for personal use, EV chargers purchased by businesses for commercial use, or EV chargers purchased by state and local governments using non-federal funds.

Q#2. What is FHWA’s definition of an “EV charger” under the Implementation Plan?

A#2. As stated in the February 21, 2023, Federal Register notice publishing the Implementation Plan, FHWA defines ‘EV charger’ to mean “the EV charger unit itself and the equipment contained inside it.” The FHWA considers this to include the charging port and the cable and connector that plugs into the vehicle. However, as further stated in the Federal Register notice, “[t]his definition does not include associated equipment external to the EV charger.” The FHWA considers, for example, energy storage systems and transformers to fall within this exclusion. Associated external EV charger equipment and an EV charger’s predominantly steel or iron housing (also known as its cabinet or enclosure) must comply with FHWA’s existing Buy America requirements.

Q#3. What chargers are covered by the Manufactured Products General Waiver?

A#3. EV chargers are covered by the Manufactured Products General Waiver where FHWA has obligated federal funds for an EV charger project prior to the effective date of the Implementation Plan (March 23, 2023). Such EV chargers are also subject to FHWA rules that are generally applicable to steel and iron, and the manufacturing processes for any predominantly steel and iron components of such an EV charger must occur in the United States.

Q#4. What chargers are covered by the Implementation Plan?

A#4. EV chargers are covered by the Implementation Plan where FHWA has obligated federal funds for an EV charger project on or after the effective date of the waiver (March 23, 2023). Such chargers are NOT covered by the Manufactured Products General Waiver.

Q#5. Are parts purchased as spares, replacements, or upgrades for EV chargers covered by the Implementation Plan?

A#5. The Implementation Plan does not cover spare, replacement, or upgrade parts if the EV charger that the parts are to be incorporated into was either 1) covered by the Manufactured Products General Waiver (see Q#3); or 2) wasn’t covered by Buy America at all because no Federal funds were previously used. In these two situations, the Manufactured Products General Waiver applies to EV charger parts purchased with Federal funds.

If the EV charger is covered by the Implementation Plan (see Q#4) and the EV charger is manufactured *before* July 1, 2024, spare, replacement, and upgrade parts must conform with this waiver when they are incorporated into the EV charger if such assembly occurs in the United States. If the EV charger is covered by the Implementation Plan and the

charger is manufactured *on or after* July 1, 2024, the parts must conform with this waiver when they are incorporated into the EV charger if (i) such incorporation occurs in the United States and (ii) after incorporation, more than 55 percent of the EV charger's components, by cost, are manufactured in the United States.

For example: An EV charger has two components, one whose cost is \$60 and is manufactured in the United States and ones whose cost is \$40 and is manufactured overseas. If the charger was manufactured prior to July 1, 2024, a recipient could replace the \$60 part with a \$60 part manufactured overseas if the incorporation of that part into the EV charger occurs in the United States. For a charger manufactured on or after July 1, 2024, a recipient could, if done in the United States, replace the \$40 part with a \$40 part that is manufactured overseas, as doing so would still mean that more than 55 percent of the EV charger's components, by cost, are manufactured in the United States. For a charger manufactured on or after July 1, 2024, a recipient could NOT replace the \$60 part with a \$60 part that is manufactured overseas, as doing so would mean that less than 55 percent of the EV charger's components, by cost, are manufactured in the United States.

Note. The above does not apply to the purchase of spare, replacement, or upgraded EV charger housing if the housing is predominantly iron or steel. If such housing is purchased with FHWA funding, it must comply with FHWA's existing Buy America requirements (see Q#12 for more information).

Implementation Plan Covered Chargers*

*** - Q#6 through Q#22 apply only to EV chargers that are covered by the Implementation Plan, as described in Q#4.**

Q#6. If an EV charger is manufactured on or after March 23, 2023, and before July 1, 2024, what needs to happen for an EV charger to conform with the Implementation Plan?

A#6. To conform with the Implementation Plan, (1) the EV charger must have final assembly occur in the United States; and (2) installation of the EV charger must begin by October 1, 2024.

Note. If any EV charger contains housing that is predominantly iron or steel, that housing is excluded from the Implementation Plan and must meet FHWA's existing Buy America requirements for steel and iron.

Q#7. If an EV charger is manufactured on or after July 1, 2024, what needs to happen for the EV charger to conform with the Implementation Plan?

A#7. To conform with the Implementation Plan, the EV charger must (1) have final assembly occur in the United States; and (2) have the cost of components manufactured in the United States exceed 55 percent of the cost of all components.

Note. If any EV charger contains a housing that is predominantly iron or steel, that housing is excluded from the Implementation Plan and must meet FHWA's existing Buy America requirements for steel and iron. Such housing is a component of an EV charger and therefore the cost of the housing must be considered when calculating whether the cost of components manufactured in the United States exceeds 55 percent of the cost of all components.

Q#8. What is the definition of a component of an EV charger?

A#8. A component is any article, material, or supply that is directly incorporated into the EV charger.

Q#9. Do the EV charger components need to be produced in the United States to allow the EV chargers to conform with the Implementation Plan?

A#9. No. For EV chargers manufactured on or after March 23, 2023, and before July 1, 2024, and for which installation has begun by October 1, 2024, only the final assembly of the EV charger itself needs to occur in the United States. The final assembly of EV charger components does not have to occur in the United States if final assembly of the EV charger in which they are included occurs in the United States.

For EV chargers manufactured on or after July 1, 2024, to conform with the Implementation Plan, more than 55 percent of the EV charger's components, by cost, must be manufactured in the United States AND final assembly must occur in the United States. This does not require all EV charger components to be produced in the United States.

Housing

Q#10. What constitutes the housing of an EV charger for the purpose of the Implementation Plan?

A#10. An EV charger's housing is defined as the component of the EV charger that contains the electronics that convert electricity to direct current. FHWA considers the housing to be a shell that encloses the contained components and an internal structure that is manufactured as connected to the shell for the purpose of organizing and holding internal EV charger components. A shell around an EV charger that incorporates electronics into the shell itself would be considered an EV charger's housing for the purpose of this waiver; however, the electronic components would not be.

Q#11. If an EV charger's housing is predominantly iron or steel, what is required for the housing to comply with FHWA's existing Buy America requirements?

A#11. A housing that is predominantly iron or steel must comply with FHWA's existing Buy America requirements. This includes the requirement that all steel or iron

components of the housing must comply with FHWA's existing Buy America requirements and have all manufacturing processes occur in the United States.

For example, if the housing of an EV charger is manufactured with iron or steel fasteners incorporated into the housing, those fasteners would need to comply with FHWA's existing Buy America requirements for the housing to be Buy America-compliant.

Final Assembly

Q#12. When does final assembly occur for the purpose of the Implementation Plan?

A#12: Final assembly of an EV charger occurs when the individual elements of the EV charger are brought together to create the EV charger that is ready to provide its intended function or use without any further manufacturing or assembly changes through the application of manufacturing processes.

Q#13. Must final assembly of components occur in the United States for the components to conform with the Implementation Plan?

A#13. No. The Implementation Plan criteria applies to EV chargers, not components. The EV charger in which the components are incorporated must have final assembly occur in the United States, meaning those components must be incorporated into the EV charger in the United States, to comply with the Implementation Plan.

Q#14. Must the final assembly of subcomponents into components occur in the United States for the components to conform with the Implementation Plan?

A#14. No. The Implementation Plan criteria applies to EV chargers, not components. Final assembly of subcomponents into components in the United States is not necessary to conform with the Implementation Plan. However, the EV charger in which those components are incorporated must have final assembly occur in the United States, meaning those components must be incorporated into the EV charger in the United States, to conform with the Implementation Plan.

55 Percent Cost of Components

Q#15. How do I determine if the cost of components in an EV charger that are manufactured in the United States exceeds 55 percent of the cost of all components?

A#15: In general, there are 4 steps in this determination:

1. Determine which components were manufactured in the United States.
2. Determine the cost of those components manufactured in the United States.
3. Determine the cost of all components.
4. Divide the cost determined in step 2 by the cost determined in step 3.

If the fraction is more than 55 percent, starting for EV chargers manufactured on July 1, 2024, the EV charger complies with the Implementation Plan as long as final assembly occurs in the United States.

If the fraction is 55 percent or less, starting on July 1, 2024, the charger will not conform with the Implementation Plan.

Note. When determining the cost of components, determine the value of a component using the standards laid out in Q#18. Do not include labor costs involved in the final assembly or final manufacture of the EV charger (see Q#19 for more information).

Q#16. How do I determine if a component is manufactured in the United States for the purpose of the Implementation Plan?

A#16: A component is manufactured in the United States if all manufacturing processes for that component occur in the United States. A component is not considered manufactured in the United States if any manufacturing process occurs outside the United States.

Q#17. Can I consider a component to be manufactured in the United States for the purpose of the Implementation Plan if that component includes subcomponents that are manufactured outside of the United States?

A#17. Yes. As long as all manufacturing processes that incorporate those subcomponents into the component occur in the United States, the component will be considered manufactured in the United States.

Q#18. How do I determine the cost of a component for the purpose of the Implementation Plan?

A#18. Under the Implementation Plan, the standards in FAR 25.003 determine the allowable costs included in purchased or manufactured components and the standards in FAR 31.201-4 determine overhead costs that are generally allocable. FAR 25.003 provides two standards for determining the allowable cost of components, one for components purchased by the manufacturer of the EV charger and one for components manufactured by the manufacturer of the EV charger.

For components purchased and then incorporated into an EV charger, the cost of that component would be the acquisition cost, including transportation costs to the place of incorporation (whether or not such costs are paid to a domestic firm) and any applicable duty (whether or not a duty-free entry certificate is issued).

For components manufactured and then incorporated into an EV charger, the cost of that component would be all costs associated with the manufacture of the component, including transportation costs to the place of incorporation, plus allocable overhead costs (determined by FAR 31.201-4), excluding profits.

Q#19. Is the cost of labor factored into the cost of a component?

A#19. As further elaborated in A#18, for components purchased and then incorporated into an EV charger, the cost of that component would be the acquisition cost. FHWA expects the cost of labor to produce that component to be factored into that acquisition cost, and labor cannot be counted as a separate cost. In addition, for purchased components, labor costs involved in manufacturing the EV charger cannot be counted towards the acquisition cost of a component and therefore cannot be counted towards the cost of a component.

For components manufactured and then incorporated into an EV charger, the cost of that component would include all costs associated with the manufacture of the component. This would include the cost of labor associated with the manufacture of the component. FHWA notes, however, that this does not include the labor costs associated with the manufacture of the EV charger.

Q#20. Are the costs of subcomponents considered when calculating the costs of components?

A#20. No, subcomponent costs are not directly considered when calculating component costs. Subcomponent costs may be indirectly included as they may factor into the acquisition cost of a purchased component and the cost to manufacture a component for manufactured components. However, the specific costs of subcomponents should not be considered outside of how they factor into the standard described in A#18.

Q#21. Does a component need to have more than 55 percent of its subcomponents, by cost, be manufactured in the United States to conform with the Implementation Plan?

A#21. No. The Implementation Plan criteria apply to EV charger units. A component must be manufactured in the United States for its value to be considered as part of the 55 percent domestic content threshold for the purpose of determining whether the EV charger complies with the second phase of the Implementation Plan. The issue of whether a component is manufactured in the United States does not depend on whether more than 55 percent of its subcomponents, by cost, are manufactured in the United States.

Q#22. What documentation is required to confirm that an EV charger has its final assembly occur in the United States or has more than 55 percent of its components, by cost, manufactured in the United States?

A#22. FHWA does not routinely require recipients of FHWA funding to submit documentation to FHWA that EV chargers are covered by and conform with this waiver. Recipients may rely on certifications from EV charger manufacturers. Recipients, however, must maintain documentation that is adequate to establish compliance of all purchased materials, including EV chargers, with applicable laws, including Buy America.

Q#23. Who is responsible for making sure that the EV chargers are in compliance with the Implementation Plan and Buy America requirements prior to installation?

A#23. For projects administered by a State Department of Transportation (State DOT), the State DOT is responsible for Buy America compliance based on the State's established specifications and material certification procedures. For projects administered by direct recipients other than State DOTs, the direct recipient must ensure compliance. The applicable FHWA Division Office should verify compliance as may be determined under FHWA's Stewardship and Oversight program.

Buy America compliance is a requirement under Federal law. Per 23 CFR 1.36, FHWA may take corrective action if it finds a violation of Buy America has occurred, including withholding payments, withholding approval of further projects in a State, and other action appropriate under the circumstances.

Project-Specific Waivers

Q#24. Can foreign-manufactured EV chargers that are covered by the Implementation Plan but do not conform with it be used in FHWA funded projects in any circumstance?

A#24. Yes, but **only** if the agency administering the project submits a waiver request for the project and FHWA approves the request. See [FHWA's Buy America Q&A for Federal-aid Program](#) and [FHWA's FAQs related to BABA](#) for more information on project-specific waiver requests.